

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the previous amendments and the following remarks.

At the outset, sincere appreciation is extended to Examiners Byrd and Elkins for their time and attention during a personal interview with the undersigned on February 18, 2010 regarding this application.

Before discussing the subject matter recited in the claims of this application and as a preface to commenting on the issues raised in the most recent Official Action, the following general overview is provided of a packaging container according to at least one embodiment described and illustrated in the present application.

The packaging container illustrated in Figs. 1 and 2 includes a top 13 formed of a first material or material combination and a body 12 formed of a second material or material combination different from the first material or material combination. As discussed during the interview and as clearly illustrated in the drawings, the top 13 includes a free edge defining a pouring opening 14, and is further provided with a tearing line 16 extending essentially from the pouring opening 14 towards an interface between the top 13 and the body 12 and essentially along an entirety of the interface.

Turning now to the claims, Claim 1, the only independent claim, is rejected as being anticipated by U.S. Patent No. 5,353,943, hereinafter Hayward.

Hayward discloses an easy-opening composite closure 10 for a packaging container 100. The closure 10 includes a composite lidding member 30 and an end member 20 double-seamed to the open end of the packaging container 100. The

lidding member 30 is bonded to a ledge portion 23 of the end member 20 and covers a central opening 24 of the end member 20. The lidding member 30 includes a circular notch 67 cut into its bottom layer, another circular notch 69 cut into its top layer, and short linear diverging notches 70 and 71. As discussed in detail from lines 52 of column 6 through line 49 of column 7 of Hayward, when a tab 33 of the lidding member 30 is pulled, a ring-shaped member 84 and a central portion 85 of the lidding member 30 are separated from the rest of the container 100.

During the interview, the Examiners clarified that the rejection set forth in the Official Action is based on the belief that Hayward's lidding member 30 corresponds to a first portion as recited, that Hayward's end member 20 in combination with the container 100 corresponds to a second portion as recited, and that Hayward's notches 67, 69, 70 and 71 correspond to a tearing line as recited. However, even assuming some basis exists for these assertions, amended Claim 1 is clearly distinguishable from Hayward.

Specifically, as discussed during the interview, Hayward's lidding member 30 does not include both a free edge defining a pouring opening, along with a tearing line extending essentially from the pouring opening towards an interface between the lidding member and the end member and essentially along an entirety of the interface. Indeed, as discussed during the interview, to the extent Hayward's lidding member 30 may include a free edge defining a pouring opening, such a feature would not yet exist until after removal of the ring-shaped member 84 and the central portion 85 of the lidding member 30, at which point the notches 67, 68, 70 and 71 no longer exist.

Accordingly, Hayward does not disclose a packaging container including a first portion formed of a first material or material combination, a second portion formed of a second material or material combination different from the first material or material combination, the first portion including a free edge defining a pouring opening, wherein the first portion is further provided with a tearing line extending essentially from the pouring opening towards an interface between the first portion and the second portion and essentially along an entirety of the interface, as recited in amended Claim 1.

Claim 1 is therefore allowable over Hayward, and withdrawal of the rejection of Claim 1 as being anticipated by Hayward is respectfully requested.

The dependent claims are allowable at least by virtue of their dependence from allowable independent claims. Thus, a detailed discussion of the additional distinguishing features recited in the dependent claims is not set forth at this time.

Early and favorable action with respect to this application is respectfully requested.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that he be contacted at the number indicated below.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

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